

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

KEITH LYLE PATTENAUDE,

Defendant-Appellant.

UNPUBLISHED

May 20, 2003

No. 238973

Charlevoix Circuit Court

LC No. 01-054509-FH

Before: Whitbeck, C.J., and White and Donofrio, JJ.

MEMORANDUM.

Defendant appeals as of right from jury convictions of three counts of second-degree criminal sexual conduct, MCL 750.520c(1)(b), for which he was sentenced to three concurrent terms of eight to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in admitting other acts evidence under MRE 404(b)(1). The trial court's ruling on this issue is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person to show action in conformity therewith. Thus, if the sole purpose in offering the evidence is to show the defendant's propensity for particular conduct based on his character as inferred from other wrongful conduct, it is not admissible. *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996). It is admissible, however, for another purpose, "such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident" if that purpose is material. MRE 404(b)(1).

The admissibility of other acts evidence is to be evaluated using the safeguards already present in the rules of evidence. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). The court must first determine whether the evidence is relevant to an issue other than the defendant's propensity to commit the crime charged under MRE 404(b). Second, the logical relevance of the evidence must be evaluated using the relevance definition provided under MRE 401 and MRE 402 as enforced through MRE 104(b). Third, the court must evaluate the evidence under MRE 403 to make certain that the danger of undue prejudice does not substantially outweigh the probative value of the evidence. Finally, should a party request a limiting instruction, the court may provide one under MRE 105. *Id.* at 74-75.

The evidence was admitted for a proper purpose: to show that defendant utilized his parent-child relationship as part of a plan to perpetrate the sexual abuse. *People v Sabin (After Remand)*, 463 Mich 43, 66; 614 NW2d 888 (2000); *People v Pesquera*, 244 Mich App 305, 318-319; 625 NW2d 407 (2001). Although the evidence was prejudicial, that prejudice was inherent in its relevance, *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002), and was not so great as to substantially outweigh its probative value. The evidence was probative on the claim by defendant of witness fabrication. Further, the court gave an appropriate limiting instruction and twice more reminded the jury that it could not convict defendant of the charged acts simply because it believed he had committed the other acts. *People v Starr*, 457 Mich 490, 503; 577 NW2d 673 (1998); *People v Smith*, 243 Mich App 657, 675; 625 NW2d 46 (2000), remanded on other grounds 465 Mich 931 (2001). Therefore, the trial court did not abuse its discretion in admitting the evidence.

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio